

## REMARKS

1. In response to the Final Office Action mailed October 9, 2007, Applicants respectfully request reconsideration. Claims 20-38 were last presented in the application. In the outstanding Office Action, claims 20-38 were rejected. By the foregoing Amendments, twelve claims (claims 20-23, 25, 26, 29, 30, 32, 33, 36 and 37) have been amended. No claims have been cancelled or added. Upon entry of this paper, claims 20-38 will be pending in this application. Of these 19 claims, 3 claims (claims 20, 25 and 32) are independent.
2. Based on the above Amendments and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

### *Art of Record*

3. Applicants acknowledge receipt of form PTO-892 listing additional references identified by the Examiner.

### *Claim Rejections Under 35 USC § 102*

4. The Examiner has rejected claims 20-38 as being anticipated by U.S. Patent No. 5,999,856 to Kennedy (hereafter "Kennedy"). Applicants respectfully disagree.
5. As amended above, independent claim 20 recites, in part, "An evoked neural response measuring device comprising *a first implanted subsystem configured to be positioned proximate to at least one desired portion of an auditory nerve to provide stimulation* to the auditory nerve, *and further configured to successively detect* an evoked neural response of the auditory nerve to said stimulation thereby obtaining a plurality of discrete values collectively representing an *unsaturated, high gain amplified version of the evoked neural response* of the auditory nerve." (See, Applicants' amended independent claim 20; emphasis added.)
6. Kennedy describes a hearing assistance system having electric response audiometry functions for diagnostic, self-calibration, frequency-response parameter adjustment, feedback self-testing and automatic gain control purposes. (See, Kennedy, Abstract.) Kennedy describes an input transducer (e.g., microphone) for receiving sound waves in the middle ear 35 region, and an

output stimulator 215 which produces mechanical vibrations that are coupled to stapes 50 or other suitable auditory element in order to assist hearing. (See, Kennedy, col. 6, ll. 52-61.) A “response sensor” that is separate from stimulator 215 such as EEG device 300 or sensor 405 is described in Kennedy as being used to receive auditory response signals. Clearly in Kennedy, there is no teaching or suggestion of a subsystem that is “*configured to provide stimulation* to the auditory nerve, *and further configured to successively detect* an evoked neural response of the auditory nerve to said stimulation” as recited in Applicants’ independent claim 20. (See, Applicants’ amended independent claim 20; emphasis added.)

7. Furthermore, Kennedy fails to teach or suggest “obtaining a plurality of discrete values collectively representing an *unsaturated, high gain amplified version of the evoked neural response* of the auditory nerve” as recited in Applicants’ independent claim 1. (See, Applicants’ amended independent claim 20; emphasis added.) Kennedy describes using the response sensor to receive an “auditory response signal, *i.e.* the portion of the received brain waves resulting from auditory neural pathway’s response to the calibration stimuli, is extracted through electric response audiometry (ERA), such as through auditory brain-stem response (ABR), cortical electric response, electrocochleography, or other known audiometric techniques.” (See, Kennedy, col. 7, ll. 23-30.) Kennedy further notes that “EEG device 300 typically includes a differential amplifier for amplification of the received brain waves.” (See, Kennedy, col. 7, ll. 38-39.) Nowhere in Kennedy is a subsystem described which is used in “obtaining a plurality of discrete values collectively representing an *unsaturated, high gain amplified version of the evoked neural response* of the auditory nerve” as recited in Applicants’ independent claim 20. (See, Applicants’ amended independent claim 20; emphasis added.)

8. Independent claims 25 and 32 are also patentable over Kennedy for reasons similar to those above for independent claim 20. For at least the reasons stated above, independent claims 20, 25 and 32 are patentable over Kennedy and other art of record. Accordingly, Applicants respectfully request that the rejections of these claims be reconsidered and withdrawn.

### ***Dependent Claims***

9. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art

of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

***Conclusion***

10. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

11. Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application, cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims, and Applicants reserve the right to pursue such claims in a continuation or divisional application.

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Respectfully submitted,

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